IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 24636 of 2007(G)

ST.2489/2004 of J.M.F.C.,PARAPPANANGADI

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PETITIONER: ACCUSED

VADAKKINIYATH MOHAMMED ALI,
S/O.MOHAMMEDKUTTY, THANALUR AMSOM,
AREAKAD DESOM, P.O.THANALUR, MALAPPURAM
DISTRICT.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS: STATE AND COMPLAINANT

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1. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. KALATHIL KOYAKUTTY, S/O.SAIDALI,
KALATHIL HOUSE, THANALUR AMSOM,
AREEKAD DESOM, P.O.THANALUR, MALAPPURAM
DISTRICT.

BY GOVERNMENT PLEADER SRI.P.RAVINDRA BABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

W.P(C).No.24636 of 2007

Dated this the 22nd day of November, 2007

JUDGMENT

Petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. Cognizance was taken as early as in 2003. Long later, the matter was referred to the Lok Adalat. Before the Lok Adalat, parties came to some agreement. Amounts were agreed to be paid in 5 instalments and the dates were specified. First instalment was paid straightaway and dates were stipulated from 14.02.07 to 30.05.07 for payment of the balance instalments. The petitioner, admittedly, did not make the payment which was due to be paid on 14.02.07. The matter was adjourned to 28.02.07 and then to 21.03.07. On that day, it was noted that the payments have not been made and the case was directed to be sent back to the court. There upon, the learned Magistrate issued non bailable warrant to the accused. The accused has not entered appearance. A warrant of arrest issued by the Magistrate is chasing the petitioner.

2. The petitioner has now come to this Court. The counsel raises various interesting questions. First of all, the counsel says that the matter has already been settled and therefore there is nothing for the Court to proceed further. This contention obviously is incorrect

and the emptiness of the contention can be seen from the nature of the settlement recorded before the Lok Adalat. The dates for payment and the instalment amounts were specified and it was then stipulated as follows: "If the amount is not paid on the specified dates, case will be sent back to the court for trial". It is very evident that settlement as such was not reached and there was only an agreement to settle the disputes. Non compliance of the terms of the proposed settlement obliterated the settlement and the matter will have to go before the court for trial, it is very evident from the stipulations in the Memorandum of Settlement recorded by the Adalat.

3. In these circumstances, by no stretch of imagination, can it be held that the matter has already been settled, the case has already been closed and there is nothing for the Lok Adalat or the Court to revive so that the accused can be saved of the ordeal of trial. The very terms of the settlement clearly stipulate that this contention is not available to the petitioner.

4. I am, in these circumstances, satisfied that there is no merit in the contention that the learned Magistrate should not be permitted to proceed further with the trial. The learned counsel for the petitioner finally prays that some further time may be granted to the petitioner to surrender before the learned Magistrate, make the

payment and seek regular bail. The schedule for payment was fixed from 14.02.2007 to 30.05.07. That agreement was reached on 27.12.06. I do not, in these circumstances, find any reason to grant any extension of time.

5. Needless to say, the petitioner can surrender before the learned Magistrate and seek regular bail. If he appears and applies for bail after complying with the requisite formalities, the learned Magistrate must certainly proceed to consider the application for bail on merits, in accordance with law and expeditiously-on the date of surrender itself.

6. With the above observations, this Writ Petition is dismissed.

(R.BASANT, JUDGE)

rtr/-